

REFERENCE TITLE: **procurement services; costs; fees**

State of Arizona
House of Representatives
Forty-eighth Legislature
Second Regular Session
2008

HB 2285

Introduced by
Representative Tobin

AN ACT

**AMENDING SECTIONS 34-103 AND 34-603, ARIZONA REVISED STATUTES; RELATING TO
THE PROCUREMENT OF PROFESSIONAL SERVICES.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 34-103, Arizona Revised Statutes, is amended to
3 read:

4 34-103. Employment of technical registrants for work on public
5 buildings and structures: direct selection: final
6 list selection: public competition

7 A. An agent shall procure professional services from a technical
8 registrant in the manner prescribed in chapter 6 of this title if either of
9 the following applies:

10 1. The contract is with a technical registrant other than an architect
11 and is for an amount of more than five hundred thousand dollars.

12 2. The contract is with an architect and is for an amount of more than
13 two hundred fifty thousand dollars.

14 B. An agent may procure professional services from a technical
15 registrant in the manner prescribed in chapter 6 of this title or as
16 prescribed in subsection D if either of the following applies:

17 1. The contract is with a technical registrant other than an architect
18 and is for an amount of five hundred thousand dollars or less.

19 2. The contract is with an architect and is for an amount of two
20 hundred fifty thousand dollars or less.

21 C. If authority is given by law to an agent to construct a building or
22 structure, or additions to or alterations of existing buildings, an agent
23 shall employ an architect or engineer, or both, as warranted by the type of
24 construction, if the agent deems the work to be of a nature that requires
25 such employment.

26 D. An agent may employ a technical registrant by direct selection, by
27 public competition pursuant to subsection G or pursuant to subsections E and
28 F if either of the following applies:

29 1. The contract is with a technical registrant other than an architect
30 and is for an amount of five hundred thousand dollars or less.

31 2. The contract is with an architect and is for an amount of two
32 hundred fifty thousand dollars or less.

33 E. The agent may elect to employ a technical registrant by encouraging
34 persons or firms engaged in the lawful practice of the profession to submit
35 annually a statement of qualifications and experience. If the agent elects
36 to employ a technical registrant by this method, the agent shall initiate an
37 appropriately qualified selection committee for each procurement, which may
38 include one or more contracts, in accordance with rules adopted by the
39 agent. The selection committee shall evaluate current statements of
40 qualifications and experience on file with the agent together with those that
41 may be submitted by other persons or firms regarding the procurement. If
42 possible and practicable, the selection committee shall conduct interviews
43 with at least three persons or firms regarding the procurement and the
44 relative methods of furnishing the required services and, if possible, shall
45 select, in order of preference and based on criteria established and

1 published by the selection committee, a separate final list for each contract
2 being procured of at least three of the persons or firms deemed to be the
3 most qualified to provide the services required. The selection committee
4 shall base the selection of each final list and the order of preference on
5 each final list on demonstrated competence and qualifications ~~only~~. The
6 agent and the selection committee ~~shall not~~ MAY request ~~or consider~~ AN
7 ESTIMATE OF fees, price, man-hours or any other cost information ~~at any point~~
8 ~~in the selection process under this subsection, including the selection of~~
9 ~~the persons or firms to be interviewed, the selection of the persons and~~
10 ~~firms to be on a final list, in determining the order of preference of~~
11 ~~persons and firms on a final list or for any other purpose in the selection~~
12 ~~process~~ IN ITS PROCUREMENT OF SERVICES AS PRESCRIBED IN CHAPTER 6, ARTICLE 1
13 OF THIS TITLE. THE ESTIMATES MAY BE ONE OF THE CRITERIA FOR SELECTION AND
14 MAY NOT ACCOUNT FOR MORE THAN TWENTY PER CENT OF THE TOTAL CRITERIA.

15 F. After a final list is selected for each contract included in the
16 procurement, the agent shall enter into separate negotiations for a contract
17 with the highest qualified person or firm on the final list for the contract
18 determined under subsection E for the professional services. The
19 negotiations shall include consideration of compensation and other contract
20 terms that the agent determines to be fair and reasonable to the agent. In
21 making this determination, the agent shall take into account the estimated
22 value, the scope, the complexity and the nature of the professional services
23 to be rendered. If the agent is not able to negotiate a satisfactory
24 contract with the highest qualified person or firm on the final list for the
25 contract at a price and on other contract terms the agent determines to be
26 fair and reasonable, the agent shall formally terminate negotiations with
27 that person or firm. The agent may enter into negotiations with the next
28 most qualified person or firm on the final list for the contract in sequence
29 until an agreement is reached or a determination is made to reject all
30 persons or firms on the final list for the contract.

31 G. If competitive designs are solicited, the agent shall publish
32 notice of the competition at least thirty days before the date set for
33 closing the competition. The notice shall include the following:

- 34 1. The project title and description.
- 35 2. The design and construction budget.
- 36 3. The competitive process and criteria to be used to select the
37 winning offeror.
- 38 4. The amount of the stipend to be paid to the unsuccessful offerors.
- 39 5. The offerors' response date.
- 40 6. The person to contact to obtain additional information regarding
41 the competition.
- 42 7. Any other requirements established by the agent as appropriate.

Sec. 2. Section 34-603, Arizona Revised Statutes, is amended to read:

34-603. Procurement of professional services and construction-manager-at-risk, design-build and job-order-contracting construction services: definition

A. Except for services an agent procures pursuant to section 34-103 or 34-604, an agent shall procure the following services pursuant to this section:

1. Architect services.
2. Construction-manager-at-risk construction services.
3. Design-build construction services.
4. Engineer services.
5. Job-order-contracting construction services.
6. Landscape architect services.
7. Assayer services.
8. Geologist services.
9. Land surveying services.

B. An agent shall provide notice of each procurement of professional services or construction services specified in this section and shall award contracts on the basis of demonstrated competence and qualifications for the type of professional services or construction services pursuant to the procedures prescribed in this section.

C. In the procurement of professional services or construction services pursuant to this section:

1. An agent shall issue a request for qualifications for each contract and publish notice of the request for qualifications. This notice shall be published by advertising in a newspaper of general circulation in the county in which the agent is located for two consecutive publications if it is a weekly newspaper or for two publications that are at least six but no more than ten days apart if it is a daily newspaper. The request for qualifications shall:

(a) Include the number of persons or firms to be included on the final list. In a request for qualifications for a horizontal construction project, at least three but not more than five persons or firms shall be on the final list. In all other requests for qualifications, three persons or firms shall be on the final list.

(b) State the criteria to be used by the selection committee to select the person or firm to perform the professional services or the construction services. The request for qualifications shall also state in a manner determined by the agent the relative weight of the selection criteria and, if required under paragraph 7, subdivision (b) of this subsection, that one of the criteria will be the person's or firm's subcontractor selection plan or procedures to implement the agent's subcontractor selection plan.

(c) If the agent will hold interviews as part of the selection process, state that interviews shall be held with at least three and no more

1 than five persons or firms, except that if multiple contracts are being
2 procured under a single request for qualifications solicitation under this
3 subsection or a single request for qualifications and request for proposals
4 solicitation under this subsection and subsection F of this section, the
5 number to be interviewed shall be at least three and not more than the number
6 of contracts plus two.

7 2. An agent shall initiate an appropriately qualified selection
8 committee for each request for qualifications. If the agent is procuring
9 professional services, the agent shall determine the number and
10 qualifications of the selection committee members. A selection committee for
11 the procurement of construction services shall not have more than seven
12 members, except that, if the contract involves the agent and additional
13 governmental or private participants, the number of members of the selection
14 committee shall be increased by one for each additional participant, except
15 that the maximum number of members of the selection committee is nine. The
16 selection committee for construction services shall include at least one
17 person who is a senior management employee of a licensed contractor and one
18 person who is an architect or an engineer who is registered pursuant to
19 section 32-121. These members may be employees of the agent or outside
20 consultants. Outside contractors, architects and engineers serving on a
21 selection committee shall not receive compensation from the agent for
22 performing this service, but the agent may elect to reimburse outside
23 contractors, architects and engineers for travel, lodging and other expenses
24 incurred in connection with service on a selection committee. A person who
25 is a member of a selection committee shall not be a contractor under a
26 contract awarded under the procurement or provide construction, construction
27 services, materials or services under the contract. The selection committee
28 shall:

29 (a) Evaluate the statements of qualifications and performance data
30 that are submitted in response to the agent's request for qualifications.

31 (b) If determined by the agent and included by the agent in the
32 request for qualifications, conduct interviews with the number of persons or
33 firms to be interviewed as stated in the request for qualifications regarding
34 the professional services or construction services and the relative methods
35 of approach for furnishing the required professional services or construction
36 services.

37 (c) After any interviews, in order of preference, based on the
38 criteria and the weighting of criteria included in the request for
39 qualifications, select a final list for each contract of persons or firms the
40 selection committee deems to be the most qualified to provide the
41 professional services or construction services and, in the case of a contract
42 that will be negotiated under subsection E of this section, rank the persons
43 or firms on the final list in order of preference. The selection committee
44 shall base the selection of the final list and the order of preference on
45 demonstrated competence and qualifications only. If the request for

1 qualifications solicited multiple contracts, the selection committee shall
2 select a separate final list for each contract, except that if multiple
3 contracts are being procured and if the request for qualifications specified
4 that all of the multiple contracts will be awarded to a single contractor,
5 the selection committee may select a single final list for all of the
6 multiple contracts. The number of persons or firms on the final list shall
7 be the number of persons or firms specified in the request for
8 qualifications, except that:

9 (i) If a smaller number of responsive and responsible persons or firms
10 respond to the solicitation, the agent may elect to have the selection
11 committee proceed with the selection process, including interviews and the
12 final list, with the remaining persons or firms if at least two persons or
13 firms remain or the agent may readvertise pursuant to this subsection as the
14 agent deems necessary or appropriate.

15 (ii) If only one responsive and responsible person or firm responds to
16 a solicitation for a contract or multiple contracts to be negotiated pursuant
17 to subsection E of this section, the agent may elect to proceed with only one
18 person or firm in the selection process and may award the contract or
19 contracts to a single person or firm if the agent determines in writing that
20 the fee negotiated pursuant to subsection E of this section is fair and
21 reasonable and that either other prospective persons or firms had reasonable
22 opportunity to respond or there is not adequate time for a resolicitation.

23 (iii) If a person or firm on the final list withdraws or is removed
24 from the selection process and the selection committee determines that it is
25 in the best interest of the agent, the selection committee may replace that
26 person or firm with another person or firm that submitted qualifications and
27 that is selected by the selection committee as the next most qualified.

28 (d) Base the selection of the final list and order of preference on
29 the final list on demonstrated competence and qualifications ~~only~~, EXCEPT AS
30 PROVIDED BY SECTION 34-103, SUBSECTION E.

31 3. Except for construction-manager-at-risk construction services for
32 horizontal construction and design-build construction services for horizontal
33 construction, an agent may procure multiple contracts for professional
34 services, construction-manager-at-risk construction services, design-build
35 construction services or job-order-contracting construction services under a
36 single request for qualifications solicitation under this subsection or, for
37 job-order-contracting construction services or design-build construction
38 services, under a single request for qualifications and request for proposals
39 solicitation under this subsection and subsection F of this section. If an
40 agent does this:

41 (a) The advertisement and the request for qualifications shall state
42 that multiple contracts may or will be awarded, shall state the number of
43 contracts that may or will be awarded and shall describe the services to be
44 performed under each contract.

1 (b) There shall be a single selection process for all of the multiple
2 contracts, except that for each contract there shall be a separate final list
3 and a separate negotiation under subsection E of this section or a separate
4 request for proposals competition under subsection F of this
5 section. However, if the request for qualifications specifies that all of
6 the multiple contracts will be awarded to a single contractor, there may be a
7 single final list and a single negotiation for all of the multiple contracts
8 under subsection E of this section or a single request for proposals
9 competition under subsection F of this section.

10 (c) The agent may award all of the multiple contracts to one
11 contractor or may award the multiple contracts to multiple contractors.

12 4. For professional services, an agent may procure multiple contracts
13 using a single request for qualifications solicitation under this subsection,
14 except that professional services that are part of design-build construction
15 services may not be procured under this paragraph. Each of the multiple
16 contracts for professional services must have a term not exceeding five years
17 and may continue in effect after the five year term for professional services
18 on projects commenced within the five year term.

19 5. An agent may procure multiple contracts for job-order-contracting
20 construction services using a single request for qualifications solicitation
21 under this subsection or using a single request for qualifications and
22 request for proposals solicitation under this subsection and subsection F of
23 this section.

24 6. Except for horizontal construction, an agent may procure multiple
25 contracts for construction-manager-at-risk construction services or for
26 design-build construction services using a single request for qualifications
27 solicitation under this subsection or for design-build construction services
28 using a single request for qualifications and request for proposals
29 solicitation under this subsection and subsection F of this section but in
30 either case only for a specific single project. Portions of the specific
31 single project shall be allocated to separate contracts.

32 7. For construction-manager-at-risk construction services,
33 design-build construction services and job-order-contracting construction
34 services if the contract will be negotiated under subsection E of this
35 section or for job-order-contracting construction services if the contract
36 will be awarded pursuant to subsection F of this section:

37 (a) The person or firm selected to perform the construction services
38 must select subcontractors based on qualifications alone or on a combination
39 of qualifications and price and shall not select subcontractors based on
40 price alone. A qualifications and price selection may be a single step
41 selection based on a combination of qualifications and price or a two step
42 selection. In a two step selection, the first step shall be based on
43 qualifications alone and the second step may be based on a combination of
44 qualifications and price or on price alone.

45 (b) The agent shall include in the request for qualifications either:

1 (i) A requirement that each person or firm submit a proposed
2 subcontractor selection plan, a requirement that the proposed subcontractor
3 selection plan must select subcontractors based on qualifications alone or on
4 a combination of qualifications and price and shall not select subcontractors
5 based on price alone and, as a selection criteria under the request for
6 qualifications, an evaluation of each person's or firm's proposed
7 subcontractor selection plan.

8 (ii) A subcontractor selection plan adopted by the agent that will
9 apply to the person or firm that is selected to perform the construction
10 services and that requires subcontractors to be selected based on
11 qualifications alone or on a combination of qualifications and price and not
12 based on price alone, a requirement that each person or firm must submit a
13 description of the procedures it proposes to use to carry out the agent's
14 subcontractor selection plan and, as a selection criteria under the request
15 for qualifications, an evaluation of each person's or firm's proposed
16 procedures to carry out the agent's subcontractor selection plan.

17 (c) The agent shall include in its contract with the selected person
18 or firm either:

19 (i) If the agent included its subcontractor selection plan in the
20 request for qualifications, the agent's subcontractor selection plan and the
21 procedures proposed by the selected person or firm in submitting its
22 qualifications with those modifications to the procedures as the agent and
23 the selected person or firm agree.

24 (ii) If the agent did not include its subcontractor selection plan in
25 the request for qualifications, the subcontractor selection plan proposed by
26 the selected person or firm in submitting its qualifications with those
27 modifications as the agent and the selected person or firm agree.

28 (d) In making the selection of subcontractors, the person or firm
29 selected to perform the construction services shall use the subcontractor
30 selection plan and any procedures included in its contract.

31 8. The agent and the selection committee shall not request or consider
32 fees, price, man-hours or any other cost information at any point in the
33 selection process under this subsection or subsection D of this section,
34 including the selection of the persons or firms to be interviewed, the
35 selection of the persons or firms to be on the final list, in determining the
36 order of preference of persons or firms on the final list or for any other
37 purpose in the selection process.

38 9. For construction-manager-at-risk construction services and
39 design-build construction services, the contract or contracts under a single
40 request for qualifications solicitation or for design-build construction
41 services a single request for qualifications and request for proposals
42 solicitation shall be limited to a specific single project.

43 D. An agent shall award a contract for professional services or for
44 construction services to one of the persons or firms on the final list for
45 that contract prepared pursuant to subsection C of this section as provided

1 in subsection E or F of this section, except that, if fewer than the number
2 of persons or firms on the final list respond to the request for proposals
3 pursuant to subsection F of this section but at least two persons or firms on
4 the final list submit responsive proposals or if one or more of the persons
5 or firms on the final list drop out of the selection process pursuant to
6 subsection E or F of this section:

7 1. If there are three or more remaining persons or firms, the agent
8 shall proceed with the selection process.

9 2. If there are only two remaining persons or firms, as the agent
10 deems necessary and appropriate, the agent may elect to proceed with the
11 selection process with the two persons or firms or may elect to terminate the
12 selection process and may elect to readvertise pursuant to subsection C of
13 this section.

14 3. If there is only one remaining person or firm, the agent may award
15 the contract to a single person or firm if the agent determines in writing
16 that the fee negotiated pursuant to subsection E of this section is fair and
17 reasonable and that either other prospective persons or firms had reasonable
18 opportunity to respond or there is not adequate time for a resolicitation.

19 E. For each contract included in the request for qualifications, the
20 agent shall enter into separate negotiations for the contract with the
21 highest qualified person or firm on the final list for that contract
22 determined pursuant to subsection C of this section for the professional
23 services or for the construction services. However, if the request for
24 qualifications is for multiple contracts and specifies that all of the
25 multiple contracts will be awarded to a single contractor, there may be a
26 single negotiation for all of the multiple contracts. The negotiations shall
27 include consideration of compensation and other contract terms that the agent
28 determines to be fair and reasonable to the agent. In making this decision,
29 the agent shall take into account the estimated value, the scope, the
30 complexity and the nature of the professional services or construction
31 services to be rendered. If the agent is not able to negotiate a
32 satisfactory contract with the highest qualified person or firm on the final
33 list, at compensation and on other contract terms the agent determines to be
34 fair and reasonable, the agent shall formally terminate negotiations with
35 that person or firm. The agent may undertake negotiations with the next most
36 qualified person or firm on the final list in sequence until an agreement is
37 reached or a determination is made to reject all persons or firms on the
38 final list. If a contract for construction services is entered into pursuant
39 to this subsection:

40 1. If the contract is for construction-manager-at-risk construction
41 services and includes preconstruction services by the contractor or if the
42 contract is for design-build construction services, the agent shall enter
43 into a written contract with the contractor for preconstruction services
44 under which contract the agent shall pay the contractor a fee for
45 preconstruction services in an amount agreed by the agent and the contractor,

1 and the agent shall not request or obtain a fixed price or a guaranteed
2 maximum price for the construction from the contractor or enter into a
3 construction contract with the contractor until after the agent has entered
4 into the written contract for preconstruction services and a preconstruction
5 services fee.

6 2. Construction shall not commence until the agent and contractor
7 agree in writing on either a fixed price that the agent will pay for the
8 construction to be commenced or a guaranteed maximum price for the
9 construction to be commenced.

10 F. As an alternative to subsection E of this section, an agent may
11 award design-build construction services or job-order-contracting
12 construction services as follows:

13 1. The agent shall use the selection committee appointed for the
14 request for qualifications pursuant to subsection C of this section.

15 2. The agent shall issue a request for proposals to the persons or
16 firms on the final list developed pursuant to subsection C of this section.

17 3. For design-build construction services and job-order-contracting
18 construction services, the request for proposals shall include:

19 (a) The agent's project schedule and project final design and
20 construction budget or life cycle budget for a procurement that includes
21 maintenance services or operations services.

22 (b) A statement that the contract or contracts will be awarded to the
23 offeror whose proposal receives the highest number of points under a scoring
24 method.

25 (c) A description of the scoring method, including a list of the
26 factors in the scoring method and the number of points allocated to each
27 factor. The factors in the scoring method shall include:

28 (i) For design-build construction services only, demonstrated
29 compliance with the design requirements.

30 (ii) Offeror qualifications.

31 (iii) Offeror financial capacity.

32 (iv) Compliance with the agent's project schedule.

33 (v) For design-build construction services only, if the request for
34 proposals specifies that the agent will spend its project budget and not more
35 than its project budget and is seeking the best proposal for the project
36 budget, compliance of the offeror's price or life cycle price for
37 procurements that include maintenance services, operations services or
38 finance services with the agent's budget as prescribed in the request for
39 proposals.

40 (vi) For design-build construction services if the request for
41 proposals does not contain the specifications prescribed in item (v) and for
42 job-order-contracting construction services, the price or life cycle price
43 for procurements that include maintenance services, operations services or
44 finance services.

45 (vii) An offeror quality management plan.

1 (viii) Other evaluation factors as determined by the agent, if any.
2 (d) For design-build construction services only, the design
3 requirements.

4 (e) A requirement that each offeror submit separately a technical
5 proposal and a price proposal and that the offeror's entire proposal be
6 responsive to the requirements in the request for proposals. For
7 design-build construction services, the price in the price proposal shall be
8 a fixed price or a guaranteed maximum price.

9 (f) A statement that in applying the scoring method the selection
10 committee will separately evaluate the technical proposal and the price
11 proposal and will evaluate and score the technical proposal before opening
12 the price proposal.

13 (g) If the agent conducts discussions pursuant to paragraph 5 of this
14 subsection, a statement that discussions will be held and a requirement that
15 each offeror submit a preliminary technical proposal before the discussions
16 are held.

17 4. If the agent determines to conduct discussions pursuant to
18 paragraph 5 of this subsection, each offeror shall submit a preliminary
19 technical proposal to the agent before those discussions are held.

20 5. If determined by the agent and included by the agent in the request
21 for proposals, the selection committee shall conduct discussions with all
22 persons or firms that submit preliminary technical proposals. Discussions
23 shall be for the purpose of clarification to assure full understanding of,
24 and responsiveness to, the solicitation requirements. Offerors shall be
25 accorded fair treatment with respect to any opportunity for discussion and
26 for clarification by the owner. Revision of preliminary technical proposals
27 shall be permitted after submission of preliminary technical proposals and
28 before award for the purpose of obtaining best and final proposals. In
29 conducting any discussions, information derived from proposals submitted by
30 competing offerors shall not be disclosed to other competing offerors.

31 6. After completion of any discussions pursuant to paragraph 5 of this
32 subsection or if no discussions are held, each offeror shall submit
33 separately the offeror's final technical proposal and its price proposal.

34 7. Before opening any price proposal, the selection committee shall
35 open the final technical proposals, evaluate the final technical proposals
36 and score the final technical proposals using the scoring method in the
37 request for proposals. No other factors or criteria may be used in the
38 evaluation and scoring.

39 8. After completion of the evaluation and scoring of all final
40 technical proposals, the selection committee shall open the price proposals,
41 evaluate the price proposals, score the price proposals and complete the
42 scoring of the entire proposals using the scoring method in the request for
43 proposals. No other factors or criteria may be used in the evaluation and
44 scoring.

1 9. The agent shall award the contract or contracts to the responsive
2 and responsible offeror whose proposal receives the highest score under the
3 method of scoring in the request for proposals. No other factors or criteria
4 may be used in the evaluation.

5 10. The contract or contracts file shall contain the basis on which the
6 award is made.

7 11. For design-build construction services only, the agent shall award
8 a stipulated fee equal to a percentage, as prescribed in the request for
9 proposals, of the agent's project final design and construction budget, as
10 prescribed in the request for proposals, but not less than two-tenths of one
11 per cent of the project final design and construction budget to each final
12 list offeror who provides a responsive, but unsuccessful, proposal. If the
13 agent does not award a contract, all responsive final list offerors shall
14 receive the stipulated fee based on the owner's estimate of the project final
15 design and construction budget as included in the request for proposals. The
16 agent shall pay the stipulated fee to each offeror within ninety days after
17 the award of the initial contract or the decision not to award a contract. In
18 consideration for paying the stipulated fee, the agent may use any ideas or
19 information contained in the proposals in connection with any contract
20 awarded for the project, or in connection with a subsequent procurement,
21 without any obligation to pay any additional compensation to the unsuccessful
22 offerors. Notwithstanding the other provisions of this paragraph, an
23 unsuccessful final list offeror may elect to waive the stipulated fee. If an
24 unsuccessful final list offeror elects to waive the stipulated fee, the agent
25 may not use ideas and information contained in the offeror's proposal, except
26 that this restriction does not prevent the agent from using any idea or
27 information if the idea or information is also included in a proposal of an
28 offeror that accepts the stipulated fee.

29 G. Until an award and execution of a contract by an agent, only the
30 name of each person or firm on the final list developed pursuant to
31 subsection C of this section may be made available to the public. All other
32 information received by the agent in response to the request for
33 qualifications or contained in the proposals shall be confidential in order
34 to avoid disclosure of the contents that may be prejudicial to competing
35 offerors during the selection process. The proposals shall be open to public
36 inspection after the contract is awarded and the agent has executed the
37 contract. To the extent that the offeror designates and the agent concurs,
38 trade secrets and other proprietary data contained in a proposal remain
39 confidential.

40 H. An agent may cancel a request for qualifications or a request for
41 proposals or reject in whole or in part any or all proposals as specified in
42 the solicitation if it is in the best interest of the agent. The agent shall
43 make the reasons for cancellation or rejection part of the contract file.

44 I. Notwithstanding any other law:

1 1. The contractor for design-build or job-order-contracting
2 construction services is not required to be registered to perform design
3 services pursuant to title 32, chapter 1 if the person or firm actually
4 performing the design services on behalf of the contractor is appropriately
5 registered.

6 2. The contractor for construction-manager-at-risk, design-build or
7 job-order-contracting construction services shall be licensed to perform
8 construction pursuant to title 32, chapter 10.

9 3. For each project for horizontal construction under a design-build
10 or construction-manager-at-risk construction services contract, the licensed
11 contractor performing the contract shall perform, with the contractor's own
12 organization, construction work that amounts to not less than forty-five per
13 cent of the total contract price for construction. For the purposes of this
14 paragraph, the total contract price for construction does not include the
15 cost of preconstruction services, design services or any other related
16 services or the cost to procure any right-of-way or other cost of
17 condemnation.

18 4. There shall be a separate request for qualifications under
19 subsection C of this section for each contract for horizontal construction
20 construction-manager-at-risk construction services or horizontal construction
21 design-build construction services.

22 J. For job-order-contracting construction services only:

23 1. The maximum dollar amount of an individual job order shall be one
24 million dollars or such higher or lower amount prescribed by the agent in an
25 action noticed pursuant to title 38, chapter 3, article 3.1 or a rule adopted
26 by the agent as the maximum amount of an individual job order. Requirements
27 shall not be artificially divided or fragmented in order to constitute a job
28 order that satisfies this requirement.

29 2. If the contractor subcontracts or intends to subcontract part or
30 all of the work under a job order and if the job order construction services
31 contract includes descriptions of standard individual tasks, standard unit
32 prices for standard individual tasks and pricing of job orders based on the
33 number of units of standard individual tasks in the job order:

34 (a) The contractor has a duty to deliver promptly to each
35 subcontractor invited to bid a coefficient to the contractor to do all or
36 part of the work under one or more job orders:

37 (i) A copy of the descriptions of all standard individual tasks on
38 which the subcontractor is invited to bid.

39 (ii) A copy of the standard unit prices for the individual tasks on
40 which the subcontractor is invited to bid.

41 (b) If not previously delivered to the subcontractor, the contractor
42 has a duty to deliver promptly the following to each subcontractor invited to
43 or that has agreed to do any of the work included in any job order:

44 (i) A copy of the description of each standard individual task that is
45 included in the job order and that the subcontractor is invited to perform.

1 (ii) The number of units of each standard individual task that is
2 included in the job order and that the subcontractor is invited to perform.

3 (iii) The standard unit price for each standard individual task that
4 is included in the job order and that the subcontractor is invited to
5 perform.

6 K. Notwithstanding anything to the contrary in this chapter, an agent
7 shall not procure any horizontal construction using the
8 construction-manager-at-risk, design-build or job-order-contracting method of
9 project delivery after June 30, 2010. For purposes of this paragraph, an
10 agent procures horizontal construction when the contract for the construction
11 services is executed by the agent and the contractor for the
12 construction-manager-at-risk, design-build or job-order-contracting
13 construction services. If a contract is executed for construction services
14 on or before June 30, 2010, construction services under the contract may be
15 rendered in whole or in part after June 30, 2010.

16 L. Notwithstanding anything to the contrary in this section or this
17 title, an agent shall not:

18 1. Enter into a contract as contractor to provide
19 construction-manager-at-risk construction services, design-build construction
20 services or job-order-contracting construction services.

21 2. Contract with itself, with another agent, with this state or with
22 any other governmental unit of this state or the federal government for the
23 agent to provide construction-manager-at-risk construction services,
24 design-build construction services or job-order-contracting construction
25 services.

26 M. The prohibitions prescribed in subsection L of this section do not
27 prohibit an agent from providing construction for itself as provided by law.

28 N. The agent shall include in each contract for construction services
29 the full street or physical address of each separate location at which the
30 construction will be performed and a requirement that the contractor and each
31 subcontractor at any level include in each of its subcontracts the same
32 address information. The contractor and each subcontractor at any level
33 shall include in each subcontract the full street or physical address of each
34 separate location at which construction work will be performed.

35 O. For the purposes of this section, "professional services" includes
36 architect services, engineer services, landscape architect services, assayer
37 services, geologist services and land surveying services and any combination
38 of those services.